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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,988	07/22/2003	Nigel Thorneywork	3022.010USU	8169

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EXAMINER

BASICHAS, ALFRED

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,988

Applicant(s)

THORNEYWORK, NIGEL

Examiner

Alfred Basichas

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-11 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-11 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 8-11, 16-18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvain (France Pat. 2705766) in view of Thorneywork (U.K. Pat. 2349458) and Kummer (DE4139904). Sylvain discloses, among other things, substantially all of the claimed limitations. Sylvain discloses an oven comprising a cooking chamber 6 defined by chamber walls 3, a baffle plate 16 (central portion thereof) mounted within the cooking chamber for directing the flow of air within the cooking chamber, the baffle plate being provided with at least one aperture 17, a fan 25

for moving air within the cooking chamber, and for maintaining a flow of air through the aperture, and a catalytic converter 20 located within the cooking chamber, wherein the catalytic converter is mounted both on the baffle plate and upstream of the fan. Sylvain further discloses the baffle plate including a plurality of perforations 28 (see at least fig. 3). However, Sylvain does not disclose a grease filter mounted upstream of the catalytic converter, a plurality of perforations, or the air directed around the baffle.

a. While Sylvain discloses a complete opening in the baffle plate, it does not specifically recite the opening being in the form of perforations or the air directed around the baffle. Nevertheless, Kummer teaches a baffle 4 with perforations 5 with air directed around the edges of the baffle (see at least fig. 1). The claimed arrangement is an obvious modification based on design choice, and depends on spatial considerations. As taught by Kummer, this arrangement is old and well known. Further, in view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this arrangement, at least as taught by Kummer, into the invention disclosed by Sylvain, as a matter of design choice.

b. Thorneywork teaches the use of a grease filter 34 mounted on an upstream side of a catalytic converter 38 for the purpose of removing any large particles of grease from the air before the air reaches the catalytic converter. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the oven of Sylvain with a grease filter in the manner as taught by Thorneywork in order to remove any large

particles of grease from the air before the air reaches the catalytic converter or the fan depending on the position of the filter. As regards mounting the grease filter and/or the catalytic converter in the recited manner appears to be a matter of design choice obvious to one of ordinary skill in the art at the time the invention was made. This is further reinforced by applicant's previously claiming various locations and the lack of disclosure of any criticality for these locations.

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sylvain (France Pat. 2705766) in view of Thorneywork (U.K. Pat. 2349458) and Kummer (DE4139904). The combination teaches substantially all of the claimed limitations, but does not specifically recite the claimed thickness of the catalytic converter. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed thickness into the invention disclosed by the above combination, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable values or ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Swain*, 156 F.2d 239. See also Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382 ("The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.").

Response to Arguments

5. Applicant's arguments with respect to the claim have been considered but are not deemed persuasive.

c. Applicant's arguments are solely based on the allegation that there is no motivation to combine Sylvan and Kummer. Nevertheless, there is indeed clear motivation discussed in the rejection.

i. Specifically, the rejection is one based on design choice in the absence of criticality. While applicant alleges criticality in the Remarks, there is no mention of equivalent passages in the specification as originally filed. Accordingly, the alleged criticality appears to be an afterthought.

d. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Specifically, applicant argues that the modifying reference teaches the arrangement externally, yet ignores the internal arrangement of the base reference.

e. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction

based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

f. In response to applicant's argument that Kummer's wall cannot be used in Sylvains design, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

g. In response to applicant's allegation that there is no motivation, the motivation has been clearly recited in the rejections above.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-83006.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

Alfred Basichas
Primary Examiner
Art Unit 3749

November 10, 2006


Alfred Basichas
Primary Examiner